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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17
18 CENTER FOR BIOLOGICAL DIVERSITY,

19 Plaintiff,

20 vs.

21 HAALAND, ET AL,

22 Defendants,

23 and

24 IONEER USA CORPORATION,

25 Defendant-Intervenor.
26
27
28

Case No.: 2:20-cv-1812-JCM-NJK

FOURTH UNOPPOSED JOINT MOTION
TO EXTEND TIME TO FILE A MOTION
FOR AWARD OF ATTORNEYS' FEES
AND LITIGATION EXPENSES

1 Plaintiff and Federal Defendants hereby file this fourth unopposed joint motion to extend
2 the time for Plaintiff to file a motion for attorneys' fees and litigation expenses to allow the
3 Plaintiff and Federal Defendants additional time to explore resolving the matter without further
4 Court involvement. Counsel for Defendant-Intervenor was conferred with and takes no position on
5 this joint motion.

6 Such a motion will further interest of judicial efficiency for the following reasons:

7 On April 21, 2021, the Court issued an Order granting summary judgment for Plaintiff on
8 Plaintiff's third claim, brought pursuant to the citizen-suit provision of the Endangered Species
9 Act, 16 U.S.C. § 1540(g)(1)(C), and ordered FWS to submit to the Federal Register proposed
10 rules to list and to designate critical habitat rule for Tiehm's buckwheat within 30 days. ECF
11 No. 42. The Court denied summary judgment for Plaintiff on the first and second claims of the
12 Amended Complaint, ECF No. 11. *Id.* The Court entered judgment that same day. ECF No. 43.

13 On April 28, 2021, Defendants filed an emergency motion to amend or alter the judgment
14 as to Plaintiff's third claim for relief, and moved to stay judgment pending its resolution. ECF
15 Nos. 44 ("59(e) Motion"), 45. On April 30, the Court granted Defendants' motion for stay of
16 judgment. ECF No. 47. All briefs relating to the 59(e) Motion were submitted by May 9, 2021.
17 ECF Nos. 48-50.

18 On May 9, 2021, Federal Defendants and Plaintiff filed their first joint motion to extend
19 the time for the Court's ruling on the 59(e) Motion by another week, until May 17, 2021, to
20 allow Federal Defendants and the Center to negotiate the terms of a stipulation that would
21 remove the need for the Court to rule on the Motion. ECF No. 51. On May 10, 2021, the Court
22 granted their motion, withheld its ruling on the 59(e) Motion until May 17, 2021, and ordered
23 Federal Defendants and the Center to provide a status update by May 14, 2021 as to whether they
24 had reached agreement. ECF No. 56.

25 In a joint status report and a second joint motion to extend filed on May 14, 2021, the
26 Center and Federal Defendants informed the Court that the parties had reached an agreement in
27 principle but required additional time to finalize a stipulation. They requested that the Court
28

1 further withhold a ruling on the 59(e) Motion until May 19, 2021, and advised they would
 2 provide another update by May 18, 2021. ECF Nos. 57, 58.

3 On May 17, 2021, the parties filed an updated status report, ECF No. 61, and a stipulation
 4 with a proposed Remedy Order that resolved their dispute and requested that the Court enter
 5 their Remedy Order for Plaintiff's Claim 3. ECF No. 60. The Court entered the Remedy Order
 6 that same day and denied both the Defendants' 59(e) Motion and the parties' second joint motion
 7 to extend as moot. ECF No. 62. On May 20, 2021, the Court issued an amended judgment on
 8 Plaintiff's third claim for which it had granted summary judgment for Plaintiff on April 21,
 9 2020. ECF No. 63; ECF No. 42.

10 The Remedy Order requires Federal Defendants to submit to the Federal Register no later
 11 than May 31, 2021, a 12-month finding pursuant to 16 U.S.C. § 1533(b)(3)(B) as to whether
 12 listing the Tiehm's buckwheat is either "warranted" or "not warranted." ECF No. 62, para. A, l.
 13 5. The Remedy Order further requires that if FWS makes a "warranted" 12-month finding, then
 14 no later than September 30, 2021, Federal Defendants shall submit a proposed listing rule to the
 15 Federal Register pursuant to 16 U.S.C. § 1533(b)(5)(A)(i). *Id.* para. B. If FWS makes a
 16 "warranted" 12-month finding and finds that designating critical habitat is prudent and
 17 determinable, then unless the Office of Management and Budget determines that a critical habitat
 18 designation would qualify as a "significant regulatory action" under Executive Order 12,866,
 19 Defendants shall submit to the Federal Register a proposed critical habitat designation pursuant
 20 to 16 U.S.C. § 1533(a)(3)(A)(i) by January 31, 2022. If the Office of Management and Budget
 21 determines the proposed critical habitat designation is a "significant regulatory action" under
 22 Executive Order 12,866, Federal Defendants will have until May 2, 2022 to submit the proposed
 23 critical habitat designation to the Federal Register. *See id.* para. C.

24 Under Fed. R. Civ. P. 54(d)(2)(B), Plaintiff has 14 days from the entry of judgment to file
 25 any motion for attorneys' fees and litigation costs. *See* Local Practice Rule 54-1(a); 16 U.S.C. §
 26 1540(g)(4) ("The court, in issuing any final order in any suit brought pursuant to paragraph (1) of
 27
 28

1 this subsection, may award costs of litigation (including reasonable attorney and expert witness
2 fees) to any party, whenever the court determines such award is appropriate.”).

3 On May 28, 2021, Federal Defendants and Plaintiff filed a Joint Motion to Extend Time
4 to File a Motion for Award of Attorneys’ Fees and Litigation Expenses. This motion asked the
5 Court to grant a 60-day extension for the June 3, 2021, deadline for Plaintiff to file a motion for
6 attorneys’ fees and costs to allow the parties time to seek resolution of this matter without further
7 Court involvement.

8 On June 1, 2021, this Court granted Federal Defendants’ and Plaintiff’s Joint Motion to
9 Extend Time to File a Motion for Award of Attorneys’ Fees and Litigation Expenses, setting July
10 19, 2021, as the date for Federal Defendants’ and Plaintiff’s to provide a status update as to the
11 resolution of Plaintiff’s attorneys’ fees and litigation costs or Plaintiff will file their motion for
12 such fees and costs.

13 On July 22, 2021, this Court granted Federal Defendants’ and Plaintiff’s Second
14 Unopposed Joint Motion to Extend Time to File a Motion for Award of Attorneys’ Fees and
15 Litigation Expenses, setting September 7, 2021, as the date for Federal Defendants’ and
16 Plaintiff’s to provide a status update as to the resolution of Plaintiff’s attorneys’ fees and
17 litigation costs or Plaintiff will file their motion for such fees and costs.

18 On September 8, 2021, this Court granted Federal Defendants’ and Plaintiff’s Third
19 Unopposed Joint Motion to Extend Time to File a Motion for Award of Attorneys’ Fees and
20 Litigation Expenses, setting November 6, 2021, as the date for Federal Defendants’ and
21 Plaintiff’s to provide a status update as to the resolution of Plaintiff’s attorneys’ fees and
22 litigation costs or Plaintiff will file their motion for such fees and costs.

23 Federal Defendant’s and Plaintiff are continuing to explore resolution of Plaintiff’s claim
24 for attorneys’ fees and litigation costs and in light of the intervening holidays and to afford
25 additional time for anticipated resolution of this issue, seek additional time to resolve this matter
26 absent any further involvement from this Court. Accordingly, the parties respectfully request a
27 fourth extension of time in Fed. R. Civ. P. 54(d)(2)(B) of another 90 days.
28

1 By agreeing to this request for additional time, Federal Defendants are not conceding
2 that Plaintiff is entitled to fees. Federal Defendants reserve all rights and defense to entitlement
3 and reasonableness of any fee request.

4 The parties request that this Court set a date of February 4, 2022 for the parties to provide
5 a status update on the resolution of Plaintiff's attorneys' fees and litigation costs or for Plaintiff
6 to file their motion for such fees and costs, if such a motion is necessary.

7
8 DATED: November 1, 2021

Respectfully submitted,

9 /s/Allison N. Melton

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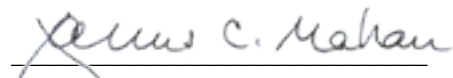
Case No.: 2:20-cv-1812-JCM-NJK

**ORDER GRANTING
FOURTH UNOPPOSED MOTION TO
EXTEND TIME TO FILE A MOTION FOR
AWARD OF ATTORNEYS' FEES AND
LITIGATION EXPENSES**

Having come before the Court on Plaintiff's and Federal Defendants' Fourth Unopposed Joint Motion to Extend Time to File a Motion for Award of Attorneys' Fees and Litigation Expenses (ECF No. 70), IT IS HEREBY ORDERED, an extension of time for Plaintiff to file a motion for attorneys' fees and litigation costs is extended by 90 days to February 4, 2022. The parties shall provide a status update as to the resolution of Plaintiff's attorneys' fees and litigation costs or Plaintiff will file their motion for such fees and costs, if such a motion is necessary, by February 4, 2022.

IT IS SO ORDERED.

Dated: November 1, 2021.


UNITED STATES DISTRICT JUDGE

DATED: November 1, 2021

Submitted by:

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